In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 573

ESTATE OF RALPH RAINGER, DECEASED, ELIZABETH RAINGER, EXECUTRIX, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The findings of fact and opinion of the Tax Court (R. 194–224) are reported in 12 T. C. 483. The opinion of the Court of Appeals (R. 264) is reported in 183 F. 2d 587.

JURISDICTION

The judgment of the Court of Appeals affirming the decision of the Tax Court was entered on August 22, 1950. (R. 265.) A petition for rehearing filed on September 15, 1950, was denied on December 20, 1950. (R. 266.) The petition

for a writ of certiorari was filed February 23, 1951. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254.

QUESTIONS PRESENTED

1. Whether the federal courts are bound in an estate tax proceeding by orders of a state court entered in a nonadversary proceeding holding that property which the Commissioner had included in the decedent's gross estate as community property was not such but was held by the decedent and his wife during his lifetime as tenants in common.

2. Whether the decedent died seized of rights in copyrighted music of the stipulated value of $50,000, which was includible in his gross estate at his death.

STATUTE INVOLVED

Internal Revenue Code:

> SEC. 811 GROSS ESTATE.
>
> The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—
>
> * * * * *
>
> (e) [as amended by Section 402 (b) of the Revenue Act of 1942, c. 619, 56 Stat. 798] Joint and Community Interests.—
>
> * * * * *

(2) *Community interests.*—To the extent of the interest therein held as community property by the decedent and surviving spouse under the law of any State, Territory, or possession of the United States, or any foreign country, except such part thereof as may be shown to have been received as compensation for personal services actually rendered by the surviving spouse or derived originally from such compensation or from separate property of the surviving spouse. In no case shall such interest included in the gross estate of the decedent be less than the value of such part of the community property as was subject to the decedent's power of testamentary disposition.

* * * * *

(26 U. S. C. 1946 ed., Sec. 811.)

STATEMENT

The facts as found by the Tax Court (R. 197–212) may be summarized as follows:

The decedent, Ralph Rainger, was a song writer who died in California on October 23, 1942. His widow qualified as the executrix of his estate. They owned no property of any importance prior to 1930, when they moved to California, where he was employed as a song writer by various motion picture studios. In 1931, the decedent was elected to membership in the American Society of Composers, Authors and Publishers, a voluntary unincorporated association organized

under the laws of New York, commonly known as Ascap. (R. 197–198.)

Under the decedent's agreement with Ascap, he transferred his rights to his compositions to it with exceptions not here material. Under Ascap's articles of association, the decedent's widow, as sole legatee under his will, succeeded to his rights as a member of the association at his death and received the distributions from it which he would have received had he continued to live. (R. 199–201.)

The decedent received $50,000 from Ascap in his lifetime, and his yearly receipts from movie studios progressed from $10,000 to more than $66,000.[1] At first, his earnings were deposited in a joint account carried in his and his wife's names. But in 1938, because of his improvidence, such earnings were placed in a separate account in his wife's name. For a short time in 1941, the funds were replaced in a joint account, but, for the same reasons, were returned to her separate account later in that year. (R. 201–202.)

[1] It was stipulated in the case at bar that at the time of their marriage, the decedent and his wife had nothing (R. 130), and that any money of any importance that he acquired was acquired by him after he and his wife went to California in 1930 (R. 129). Mrs. Rainger testified at the trial that the decedent had earned all of the money; that she did not work in California; and that she had not received any gifts from any one, or any inheritance or legacies after coming to California. (R. 127.)

From the time the decedent went to California, he and his wife made returns of their federal income taxes on the community property basis, and the first estate tax return which she filed as executrix after his death listed the property as community property (R. 203). The decedent's will was admitted to probate on November 19, 1942, in the California Superior Court and the state inheritance tax appraiser, on May 9, 1944, filed his report claiming that the decedent had left after-discovered property in the form of domestic and foreign copyrights, including performance and renewal rights, as evidenced and affected by his contract with Ascap. (R. 203–204.)

In her original objections to the inheritance tax appraiser's report, the executrix merely denied there was such property. But in her amended objections, filed after the instant federal tax controversy arose, she alleged that if the state court should find that the decedent held such interests, they were owned by the decedent and his wife as tenants in common and not as community property. (R. 204.) In the state probate case the issue of whether there existed in the decedent's estate, at the time of his death, the additional property described in the report of the inheritance tax appraiser, was completely and thoroughly litigated (R. 204), but there was no real controversy between the parties as to the separate community property issue (R. 205).

The attorney for the estate advised the state court that the community property issue made no difference for state inheritance tax purposes, but that it did make a difference for federal estate tax purposes, in that, unlike the state inheritance tax authorities who would include only one half of the property in the gross estate whether it should be considered as community or separate, the federal authorities contemplated taxing the entire property by virtue of the Internal Revenue Code which, as amended two days before the death of the decedent, authorized the inclusion in the gross estate of the entire community property[2] (R. 205). In connection with

[2] In his opening statement to the state probate court, the attorney for the estate stated that the probate court's determination of the question whether the property was community or separate property would seriously affect the rights of the widow with respect to the federal estate tax, although the determination of the federal tax was not before that court. He likewise stated that, for that reason, he intended to introduce evidence in connection with the point to show that under an agreement between the decedent and his wife the status of the property was changed in 1938 from community property to separate property, because he did not want to rely on a consent judgment. (R. 205–208, footnote 1.) The attorney for the state controller stated that he was not concerned with the issue, since the state was taxing only one-half of the property however it might be decided, and that he would not argue either way (R. 206–207, footnote).

In the case at bar, Mrs. Rainger testified on cross-examination before the Tax Court that she did not know the difference between community property and tenancy in common and separate property, and that she had never had any discussion with the decedent regarding the nature of the hold-

the community property issue, the executrix and a bank manager testified concerning the separate bank accounts, but there was no cross-examination, no documentary evidence, no opposing claim, and no argument on the merits (R. 205).

On March 21, 1945, the state court entered its order in the appraisal proceeding, determining the issues in connection therewith. In addition, the state court found that the decedent and his wife each owned a one-half interest in separate property, including the decedent's rights under his contract with Ascap, and that the decedent's undivided one-half interest in such rights had a value of $20,000 at the time of the decedent's death. (R. 206–209.) A subsequent order for the partial distribution of the estate was entered by the state court in the probate proceedings proper upon a petition filed by the executrix,

---

ings of the property they had (R. 121); that she did not know whether it was held in joint tenancy by them or not (R. 134); that she did not know whether it was community property or not (R. 141); that, as a result of general conversations she had had with her husband she always felt that she owned one-half of the property and that he owned the other half, and that she was sure he felt that way (R. 151); that she did not know the difference "to this day" between community and separate property (R. 154); and that all she knew was that half belonged to her and half to the decedent, and that whether it was called community or separate she did not know (R. 157). And on redirect examination, she indicated that she had signed the amended objections in the state probate case claiming the property owned to be separate, only because the attorney for the estate had, in the meantime, changed his opinion as to the status of the property (R. 148–149).

reciting that court's previous order in the appraisal proceeding. (R. 209–210.)

In determining the federal estate taxes due from the decedent's estate, the Commissioner included in the gross estate the value of the entire property (R. 19–23), in accordance with Section 811 (e) (2) of the Internal Revenue Code, *supra,* p. 3, and the executrix petitioned the Tax Court for a review of the Commissioner's determination, claiming that the property in the decedent's estate was not community property, but that she and the decedent each owned one-half thereof separately, *i. e.,* as tenants in common (R. 7–17).

The Tax Court found that there had been no real controversy between the parties to the appraisal proceeding in the state probate court with respect to the community property issue, as was evidenced by the statement made at the appraisal hearing by the state controller, and the fact that the attorney for the estate had advised the state court at the same hearing that the issue made no difference for state inheritance tax purposes, but only for federal estate tax purposes (R. 205). See footnote 2, *supra,* p. 6. The Tax Court then concluded that all of the property in question was community property, and that, at the time of his death, the decedent was possessed of property rights in and to certain musical compositions of a stipulated value of $50,000 (R. 209). Accordingly, it sustained the Commissioner's determination that the entire property, including

the decedent's musical composition rights, was includible in the gross estate as community property. (R. 212–222.)

On appeal to the Court of Appeals for the Ninth Circuit, that court affirmed the Tax Court's decision in a *per curiam* opinion (R. 264).

ARGUMENT

1. The Tax Court was clearly correct in refusing to be bound by the orders of the Superior Court of California, entered on an uncontested, nonadversary issue in a probate proceeding, holding that the property in the decedent's estate was not community property but was owned by the decedent and his wife during his lifetime as tenants in common. This decisive order of the state court was entered in an appraisal hearing which involved the liability of the estate for state inheritance taxes. In the appraisal proceeding, the executrix posed an issue concerning the status of the property in the estate, but there was no need for a decision on the question whether the property was held separately or as community property, since the state would tax only one-half of it in any event. Thus, the only purpose of the executrix in raising the community issue in the state court was to obtain a decision of that court that the property was held separately, which the representatives of the estate hoped would be binding on the federal courts in a forthcoming federal estate tax proceeding, and which

would have the effect of reducing the federal estate taxes due from the estate. And it is obvious from the statements made by the attorney for the estate in the state court, that the sole purpose of adducing evidence on the issue whether the property was held separately was to give the semblance of a controversy to that part of the proceeding, since it was his avowed purpose to avoid a consent decree, the attorney for the state having indicated that he would not contest the particular issue in any manner.

The Tax Court concluded that the rule announced by this Court in *Freuler* v. *Helvering,* 291 U. S. 35, and *Blair* v. *Commissioner,* 300 U. S. 5, to the effect that decisions of state courts in certain matters are binding on the federal courts, applies only to a state court decision rendered in proceedings presenting a real controversy, which settles an issue regularly submitted, and which is not, in any sense, a consent decree. That interpretation of the above-cited decisions is plainly correct. There is nothing in those decisions to indicate that this Court contemplated that state decisions would be binding on federal courts where the state court decisions are based on feigned issues. On the contrary, it is implicit in this Court's decision in the *Freuler* case, page 45, that collusive or consent decrees are not binding on the federal courts. In the case at bar, the state court's decision that the property in the decedent's estate was held by the

decedent and his wife as tenants in common was dispositive solely of an uncontested issue which was entirely beyond the controversy then before that court, an issue feigned, with the tacit consent of the only other party to the proceeding, to secure a reduction in federal estate taxes. In view of the fact that the widow was the sole devisee under the will, it is plain that there could be no controversies with other parties in the probate proceedings with respect to the status of the property.

Since the facts in the case at bar clearly bring it within the exceptions recognized by this Court in the *Freuler* case, *supra,* there is obviously no merit in petitioner's contention (Pet. 10) that the decision of the court below is in conflict with the decisions of this Court in the *Freuler* and *Blair* cases, *supra.* And petitioner's further assertion (Pet. 10) that the decision of the court below is in conflict with *Helvering* v. *Rhodes' Estate,* 117 F. 2d 509 (C. A. 8); *Henricksen* v. *Baker-Boyer National Bank,* 139 F. 2d 877 (C. A. 9); and *Eisenmenger* v. *Commissioner,* 145 F. 2d 103 (C. A. 8), is likewise without merit. The *Rhodes* case was plainly stated by the court to be an adversary proceeding, and the *Henricksen* and *Eisenmenger* cases both involved instructions to trustees in connection with adverse interests. In the circumstances, no conflict exists between the cited cases and the decision of the court below.

Moreover, there is no basis for the taxpayer's contention that in 1938 the decedent and his wife, by an agreement entered into in that year, converted their community property into separate property and that it was held by them thereafter as tenants in common. The evidence introduced before the Tax Court clearly does not justify a finding that the decedent and his wife had entered into such an agreement in 1938. Accordingly, the decision of the Tax Court is correct that the property at all times was and remained the community property of the parties. The appellate court therefore committed no error in affirming the decision of the Tax Court on this point.

2. The taxpayer's contention (Pet. 16) that neither the Tax Court nor the court below gave full faith and credit to the articles of association of Ascap, as it was allegedly required to do under the decision of this Court in the case of *Order of Travelers* v. *Wolfe,* 331 U. S. 586, is pointless. The question here is whether the decedent was seized of certain property rights arising out of the transfer of his copyrighted music to Ascap, which were transferred to his widow under his will at the time of and as a result of his death. Ascap's articles of association recognized that these rights survived the decedent and were transferred at his death either by his will or under the intestacy laws. It was stipulated that these rights then had a value of $50,000. The decedent's wife succeeded thereto upon his death as

the sole beneficiary under his will. Ascap acknowledged this by an agreement with her which it executed in confirmity with its articles. And, pursuant to this agreement, Ascap paid her the amounts which it would otherwise have paid the decedent had he continued to live.

We find nothing in the *Wolfe* case which is in conflict with the holding of the Tax Court that there were rights in the decedent's estate which passed to the widow on his death. There is, therefore, no merit in petitioner's contention that the value of the decedent's rights here in question was not includible in his gross estate at his death.

CONCLUSION

The decision of the court below, which rests on the particular facts of the case, is clearly correct, and there is no conflict of decisions. The petition for a writ of certiorari should be denied.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.
THERON LAMAR CAUDLE,
Assistant Attorney General.
ELLIS N. SLACK,
A. F. PRESCOTT,
CARLTON FOX,
Special Assistants to the Attorney General.
JOHN R. BENNEY,
Attorney.

APRIL 1951.

U. S. GOVERNMENT PRINTING OFFICE: 1951